IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WP(C).No. 25565 of 2006(R)

PETITIONER:

K.MOHANAN, ASST.DIRECTOR (BALLISTICS),
FORENSIC SCIENCE LABORATORY, TRIVANDRUM.

BY ADV. SRI.K.JAJU BABU
SRI.BRIJESH MOHAN
SRI.N.T.SASI
SRI.K.A.SUJAN
SRI. M.U. VIJAYALAKSHMI

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, HOME AND VIGILANCE DEPARTMENT, GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. THE DEPARTMENTAL PROMOTION COMMITTEE (HIGHER), REPRESENTED BY ITS CONVENOR, HOME AND VIGILANCE DEPARTMENT, REPRESENTED BY THE ADDL.CHIEF SECRETARY TO GOVERNMENT, HOME AND VIGILANCE DEPARTMENT, GOVT. SECRETARIAT, TRIVANDRUM.

3. THE DIRECTOR GENERAL OF POLICE, KERALA, POLICE HEADQUARTERS, TRIVANDRUM.

ADDL. R4 IMPLEADED

4. DR. K.P. JAYAKUMAR,
JOINT DIRECTOR (RESEARCH)
FORENSIC SCIENCE LABORATORY,
POLICE DEPARTMENT, THIRUVANANTHAPURAM.

(ADDL. R4 IS IMPLEADED AS PER ORDER DATED 11.12.2006 IN I.A. NO.17118/2006)

BY ADV. SRI.N.SUGATHAN
SMT.VARSHA BHASKAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF G.O.(MS) NO. 184/96/HOME DATED 19.10.1996 ISSUED BY THE 1ST RESPONDENT.

EXT.P2: TRUE COPY OF ORDER NO. G2/107936/99 DATED 04.12.2003 ISSUED BY THE 3RD RESPONDENT.

EXT.P3: TRUE COPY OF ORDER NO.G5-76227/96 DATED 04.12.2003 ISSUED BY THE 3RD RESPONDENT.

EXT.P4: TRUE COPY OF RELEVANT EXTRACT OF PROVISIONAL SENIORITY LIST VIDE LETTER NO. A5/88973/2003 DATED 29.01.2004 ISSUED BY THE 2ND RESPONDENT.

EXT.P5: TRUE COPY OF THE LETTER NO. A5/11467/04/04 DATED 11.05.2004 SENT BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

EXT.P6: TRUE COPY OF G.O.(RT) NO. 2936/2005/HOME DATED 25.11.2005 ISSUED BY THE 1ST RESPONDENT.

EXT.P7: TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P8: TRUE COPY OF THE JUDGMENT DATED 06.04.2006 IN W.P.(C) NO. 23945/2004 OF THIS HON'BLE COURT.

EXT.P9: TRUE COPY OF THE NOTIFICATION NO. G.O(P) NO. 127/06/HOME DATED 10.08.2006 ISSUED BY THE 1ST RESPONDENT.

EXT.P10: TRUE COPY OF THE ORDER NO. G.O(RT.) NO. 2079/2006/HOME DATED 13.09.2006 ISSUED BY THE 1ST RESPONDENT.

EXT.P11: TRUE COPY OF THE JUDGMENT DATED 11.12.2004 IN OP NO. 1890/1999 OF THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS:

EXT. R4(a): TRUE COPY OF ORDER NO. G5-76227/1996 DATED 21.3.2004.

EXT.R4(b): TRUE COPY OF ORDER NO. G5-58066/04 DATED 14.2.2005.

EXT.R4(c): TRUE COPY OF ORDER NO. G5-58066/04 DATED 12.05.2005.

EXT.R4(d): TRUE COPY OF G.O.(RT.) NO. 5050/96 HOME DATED 12.12.1996.

EXT.R4(e): TRUE COPY OF NOTIFICATION DATED 19.03.2002.

EXT.R4(f): TRUE COPY OF G.O.(RT) NO. 1813/2004/HOME DATED 12.8.2004.

EXT.R4(g): TRUE COPY OF G.O.(RT) NO. 1602/2004/HOME DATED 23.07.2004.

EXT.R4(h): TRUE COPY OF G.O.(P) NO. 349/2004/HOME DATED 03.12.2004.

EXT.R4(i): TRUE COPY OF G.O.(RT) NO. 1534/2005/HOME DATED 18.06.2005.

/True Copy/

P.A to Judge.

KURIAN JOSEPH , J

==========

W.P.(C) NO. 25565 OF 2006

==========

Dated this the 19th day of July, 2007.

JUDGMENT

The writ petition is filed with the following prayers:

i. issue a writ of certiorari or other appropriate writ, order or direction calling for the records leading to Exts.P9 and P10 and quash the same to the limited extent they deny inclusion of the name of the petitioner in the select list of Scientific Assistant for promotion as Assistant Director (Balistics) for the year 1995 towards the vacancy which arose as per Ext.P1.

ii. declare that the petitioner is entitled for inclusion in the select list of Scientific Assistants (Ballistics) for promotion as Asst. Director (Ballistics) in the Forensic Laboratory for the year 1995 and also for promotion in the vacancy which arose as per Ext.P1.

iii. issue a writ of mandamus or other appropriate writ, order or direction directing the respondents 1 and 3 to include the petitioner's name in the Select list of Scientific Assistant (Ballistics) fit for promotion Assistant Director (Ballistics) in the Forensic Science Laboratory for the year 1995 and promote him as Assistant Director (Ballistics) with effect from the date of occurrence of vacancy as per Ext.P1 with all consequential benefits including arrears of salary, seniority and consequential retrospective promotion as Joint Director forthwith.

2. It is stated in the counter affidavit that the suspension period has been regularised for all purposes as duty. It is also stated in the counter affidavit that only due to the suspension followed by the disciplinary action, the D.P.C did not consider his name. Now that snag has been removed as per Ext.P6, the petitioner is entitled to be considered for retrospective promotion to the post of Assistant Director in respect of vacancies which arose as per Ext.P1. As far as further promotion is concerned, he should complete two years service from the date of his initial appointment as Assistant Director. By the time of such deemed duty also, the petitioner cannot stake any claim over the 4th respondent since the 4th respondent had already been promoted before the petitioner completed two years of deemed duty as Assistant Director. Not only that, it is seen that there is Ext.R4 (h) select list of Assistant Directors fit for promotion as Joint Directors. There is no challenge on that though the petitioner is excluded and the 4th respondent is included. Therefore, there arises no question of retrospective promotion of the petitioner over the 4th respondent in the cadre of Joint Director. However,

for the inclusion of the petitioner in the 1995 list, the matter requires reconsideration.

3. In view of the developments referred to above, there will be a direction to the 2nd respondent to take appropriate action in the matter of retrospective promotion to the post of Assistant Director in the light of the observations contained in this judgment within a period of two months from the date of production of a copy of this judgment.

The writ petition is disposed of accordingly.

KURIAN JOSEPH, JUDGE.

rv